Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	
Speech-to-Speech Services for Individuals	)	CG Docket No. 03-123
with Hearing and Speech Disabilities	)	

REPLY COMMENTS OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

The National Exchange Carrier Association, Inc., as Administrator of the Interstate Telecommunications Relay Service (TRS) Fund (the Administrator), submits this Reply to comments in the above-captioned proceeding.

TRS Payment and Revenue Requirements for the July 2007-June 2008 funding period were submitted to the Commission on May 1, 2007 (*2007 TRS Filing*).[1] Seven providers and numerous other parties filed comments in response to the *2007 TRS Filing.*[2] Commenting relay service providers generally object to the fact that the *2007 TRS Filing* included several alternative formulas for the Commission's consideration. Most take exception to the inclusion of alternative formulas that excluded projected costs associated with certain provider-specific expenses and Marketing and/or Outreach expenses in general. One provider claims the Administrator should have proposed to

[1] Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate* (May 1, 2007) (*May 1, 2007 Submission or 2007 TRS Filing*).

[2] SPRINT, Hands On Video Relay Services, Inc. (HOVRS), CSDVRS, Hamilton Relay, AT&T, Verizon-TRS, and Sorenson Communications filed comments. Over three hundred other parties filed various documents, most of which contained a form letter dated April 2007, urging the Commission not to reduce VRS rates.

offset the 2007/2008 funding requirement with a portion of the projected funding surplus for the current funding year. Several providers used the opportunity to comment on the *2007 TRS Filing* to "tee-up" issues that were neither included in nor related to the Administrator's submission.[3]

To assist the Commission in resolving these matters, the Administrator herein responds to specific concerns identified in the comments.[4]

I. DISCUSSION

A. Alternative Formulas contained in the May 1, 2007 TRS Filing

As several commenters noted, the *2007 TRS Filing* contained several alternative formulas and fund size estimates that were based on suggestions contained in the Commission's Further Notice of Proposed Rulemaking (*FNPRM*) in the above-captioned proceeding.[5] At this time, no final order has been released in response to the *FNPRM*.

These commenters argue formulas that "propose" compensation based on something other than provider-projected costs and demand should be rejected because they prejudge a final decision by the Commission.[6] The *2007 TRS Filing* does not seek to prejudge the formula finally adopted by the Commission. Further, the *2007 TRS Filing* includes formulas based on provider-projected costs and demand. The *2007 TRS Filing*

[3] *See e.g.*, Hamilton at 2 (MARS), HOVRS at 51-65 (annual true-ups and tiered VRS formula), and CSDVRS at 9 (tiered VRS formula).

[4] This Reply does not identify specific disallowances or limitations for individual providers as Commission rules prohibit such discloser. *See* 47 C.F.R §64.604 (c)(5)(iii)(I).

[5] Telecommunications Relay Services and Speech-to-Speech Communications for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, *Further Notice of Proposed Rulemaking*, 21 FCC Rcd 8379 (2006) (*FNPRM*).

[6] *See e.g.*, Sprint at 1, Sorenson at 10-11.

also provided the Commission with quantification of alternative methodologies suggested in the *FNPRM* based on data submitted by the providers for the current funding year. At no point does the *2007 TRS Filing* state a preference or attempt to influence the Commission in the determination of the final rate setting methodology.

Sorenson claims the inclusion of multiple formulas is contrary to the expressed goals of the Chairman and the other Commissioners to simplify the TRS rate methodology[7] As Verizon recognizes, however, the availability of multiple formulas expedites rather than impedes the Commission's goals. According to Verizon, the Administrator "has already collected much of the data that would be needed to establish rates under a number of methodologies contained in comments and replies, and, in some instances, has calculated rates accordingly in its recent proposal to the Commission. This means that once the Commission issues an order adopting methodology for establishing rates for each of the services and establishes guidelines to govern future data submission, rates may be set without much further delay."[8]

As stated in the *2007 TRS Filing*, the intended purpose of providing multiple formulas for the Commission's review was to assist the Commission in its deliberations in the instant proceeding and ultimately arriving at final formulas for the 2007-2008 funding year.[9]

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[7] Sorenson at 3.

[8] Verizon at 3.

[9] *2007 TRS Filing* at 8.

B. Exclusion of Certain Provider-Specific Expenses

Certain providers contend that the Administrator improperly excluded or limited projected expenses from their cost projections in proposing payment formula alternatives for the 2007-2008 funding year.[10] As noted above, the *2007 TRS Filing* included a payment formula for each of the services representing provider cost and demand data as submitted. Nevertheless, the Commission has previously determined that certain costs, such as research and development, exceed the scope of reasonable costs to meet minimum service standards.[11] Additionally, the Commission in its July 12, 2006 *Memorandum Opinion and Order* stated, "[i]t is the fund administrator's role to request and collect the providers' cost and demand data, to review that data for compliance with the Commission's rules, and to propose compensation rates to the Commission based on that data."[12] The Commission further made clear that in so doing, "the fund administrator need not defer to the judgment of the providers concerning what are allowable costs; indeed, such an arrangement would be an abdication of the administrator's role in overseeing the integrity of the fund".[13] Individual providers were notified of costs the Administrator determined did not comport with the "necessary to

[10] *See e.g.,* HOVRS at 8 , Sorenson at 17, Sprint at 3.

[11] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, *Order*, 19 FCC Rcd at 12538-12539, 12549-12550,¶¶ 166, 193 *(2004 TRS Report & Order)*

[12] *See* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, *Memorandum Opinion and Order*, 21 FCC Rcd 8063 (2006), *citing 2004 TRS Report & Order*, 19 FCC Rcd at 12239, ¶ 40 (rejecting notion that NECA cannot make adjustments to cost data in proposing rates to the Commission).

[13] *Id*. at ¶12.

meet minimum standards" test previously established by the Commission, and each has the ability to challenge that determination with the Commission.[14]

C. Treatment of Current Year Funding Surplus

AT&T contends that retaining the projected surplus from the current funding year is unnecessary and recommends that, at a minimum, $25 million of the projected $45 million surplus in the Fund for 2006-2007 be applied to offset the 2007-2008 TRS funding requirement.[15] AT&T further argues that failure to apply a portion of the current surplus to reduce the 2007-2008 Fund contribution factor will seriously prejudice Fund contributors that, as a result, overpay during the current funding period.[16]

AT&T bases its argument to apply a portion of the projected surplus on its belief that "retention of a safety margin now clearly is no longer appropriate" and that "the current Fund estimate does not identify any specific concerns that appear to justify retaining this safety margin"[17]

Subsequent to the *2007 TRS Filing*, minutes of use for the month of March 2007 were reported by providers and verified by the Administrator. The filing contemplated that growth in VRS minutes based on the trending of historical demand[18] would produce a monthly total of 5,000,000 minutes or more for the first time in September 2007. Based on the data submitted by VRS providers, March 2007 minutes are already exceeding that

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[14] *Id*. at ¶ 8.

[15] AT&T at 2.

[16] *Id*. at 4.

[17] *Id*. at 3-4.

[18] Using the methodology recommended by AT&T in its Comments on the 2006 Annual TRS Submission.

threshold. Based on this more recent information, the Fund is now projected to include a surplus of $41.5 million for the current fund year, down significantly from prior estimates.[19]

Assuming that VRS minutes grow at the same rate as that included in the *2007 TRS Filing*, but using March 2007 actual reported minutes as a starting point instead of February 2007 minutes, the total minute projection for the 2007-2008 funding year would be approximately 71.5 million minutes. The *2007 TRS Filing* contemplated that providers would handle only 65.1 million minutes during that period. A 6.4 million minute difference at the current rate accounts for over $42.5 million dollars not included in the funding requirement.

Given the above, the Administrator believes its request to retain the now reduced surplus amount for the current funding year as a safety margin for the 2007-2008 funding year is prudent.

D. Miscellaneous Issues

Hamilton Relay supports the multi-formula approach utilized by the Administrator but suggests that if the Commission were to adopt its proposed MARS plan for Traditional TRS, STS and IP-Relay, the time-consuming efforts of providers, the Administrator and the Commission involved in submitting, compiling and reviewing data would no longer be necessary.[20] While the Administrator takes no position on the MARS plan, its systems are capable of being modified to administer rates based on a MARS-based plan.

[19] The updated projection can be viewed on the Administrator's website. *See* http://www.neca.org/media/0407MarchdataTRSPROJ2006-2007c.pdf

[20] Hamilton at 2.

HandsOn and CSDVRS both advocate the adoption of a tiered rate structure for VRS, with the compensation for minutes exceeding certain monthly demand thresholds being less on a per minute basis than for minutes at the lower thresholds.[21] HandsOn also asserts that a tiered rate structure would obviate the need for a true-up mechanism.[22]

The Administrator takes no position on the policy implications of either a tiered structure for VRS rates or whether an annual true-up mechanism should be introduced into the process. Should the Commission wish to implement either approach the Administrator has experience in both developing and administering tiered rate structures and cost true-up mechanisms and would be prepared to do so for the TRS fund as directed by the Commission.[23]

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
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[21] CSDVRS at 9 and HOVRS at 51.

[22] HOVRS at 56.

[23] HOVRS incorrectly claims (at 60) that the true-up mechanism for Interstate Common Line Support (ICLS) would be an inappropriate model for a TRS true-up because the ICLS true-up is based "simply on LEC and CLEC line counts without detailed review of the myriad of cost elements or evaluation of the reasonableness of expenses." ICLS for ILECs is initially based on their **projected** interstate carrier common line revenue requirement and revenues as defined in 47 C.F.R. § 69.104 and 69.301 and is subsequently trued-up to **actual** costs incurred and revenues realized as defined in 47 C.F.R. §54.903(a)(4). Actual costs, as defined here, are only those costs permitted for recovery by the Commission's jurisdictional separations and access charge rules.

CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Reply Comments was served this 23rd day of May 2007, by electronic filing and email to the persons listed below.

By: /s/ Elizabeth R. Newson
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